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ABSTRACT

In the game-like world of competitive tournament debating, fiat power is simply another rule of the game, a way of saying "hypothetically" or "for the sake of argument let us assume this affirmative plan to be implemented." While fiat power is just a way of saying "let's pretend," there are limits to the pretense. For example, the affirmative team cannot fiat the physically impossible, such as a magic wand to cure the ills of the world. Similarly, neither side can fiat away problems associated with the policy options that they espouse--problems such as the lack of solvency or the presence of disadvantages. It is unfortunate when debaters misanalyze the concept of fiat power. However, it is even more unfortunate when debate judges and coaches allow such misanalysis. Fiat power is not limited to one side, and if the game is to work, all the players need to know the rules and how to play by them. After all, debate is a game for the benefit of the players. (DF)

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WHAT MAKES A FIAT RUN?

A Consideration of the Nature of Fiat Power in Academic Policy Deliberation

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WHAT MAKES A FIAT RUN?

A consideration of the Nature of Fiat Power in Academic Policy Deliberation

In the game-like world of competitive tournament debating, fiat power is simply another of the rules of the game. In the real world, it would be all but impossible for two college students, let alone two high school students, to implement the policies which an affirmative team calls for in their plan. Since, in actuality, the plan could not be implemented, it could not be thoroughly analyzed and evaluated. Therefore, the processes and merits of competitive tournament debate would be thwarted. Thus, to solve this problem, the idea of fiat power has evolved.

Fiat power is just a way of saying "hypothetically" or "for the sake of argument let us assume this affirmative plan to be implemented." Under these stipulations, the negative team can more easily debate another area of clash -- the results of the plan. While fiat power is a way of saying "let's pretend," there are limits to the pretense. These are common sense limitations designed to improve the quality of competitive debating. For example, the affirmative team cannot fiat the physically impossible e.g., the affirmative cannot fiat, a magic wand to cure the ills of the world. This limitation, which has been referred to as "the scope of could," [1] holds that what an affirmative advocates and fiats must be within the realm of physical possibility. It <u>could</u> happen. This does not mean that it <u>would</u> happen. This does not mean that it is even likely to happen. It means only that it is <u>theoretically possible</u> for the advocated proposal to be implemented. Obviously, it avails us little to debate magic wands and mystical cures and neither side can fiat these.

Similarly, neither side can fiat away problems associated with the policy options which they espouse -- problems such as the lack of solvency or the presence of disadvantages. For example, when debating certain resolutions, affirmative teams will propose enforcement procedures which mandate that specific governmental agencies (e.g., the IRS, the EPA, the EEOC, etc.) conduct searches on specified properties. The negative team may respond with a "Catch 22" solvency argument. Essentially, the negative argues that these agencies cannot search properties without the voluntary consent of the owner, or his agent of authority, unless the searchers have a proper search warrant. The negative will then argue that if the owner, or his agent of authority, is engaged in an act of wrongdoing, which the search would reveal or tend to reveal, then they will not grant permission to the agency to search. Therefore, without permission, in the absence of a valid search warrant, there can be no legal search. The affirmative will often respond by arguing, "Okay, they will get a search warrant." The negative will then respond that you cannot get a search warrant without probable cause, and that in order to have probable cause the agency must know what is happening on the premises which are to be searched. However, in order to know this, the agency must go inside the establishment, but in order to go inside the establishment, the agency must obtain a proper search warrant.

The above is a classic example of a "Catch 22" argument which destroys, or at least seriously damages, the solvency of the affirmative team's plan.

There are many sound lines of response which an affirmative team could develop in order to come to grips with this particular negative attack. In

my opinion, the best response is an evidential one which argues that these particular types of search warrants are relatively easy to obtain, and that the agency can show probable cause without having been inside the establishment. However, when the affirmative team is lacking in evidence, they cannot make this type of response.

At this juncture, affirmative teams, without adequate evidence, try to fiat the ability of the government agency to get the search warrant by arguing, "Of course, the IRS (or EPA or EEOC) can search -- remember our plan. We mandated searches by the appropriate government agency." A response of this nature is somewhat akin to a new plan plank in first affirmative rebuttal, and is clearly an abuse of the fiat power. It is an attempt to fiat solvency; and, in competitive academic debate, neither side can fiat solvency. Gerald H. Sanders has noted this, and he has given a straightforward explication of fiat power in writing:

> Another right of the affirmative that is important is the power of fiat. This means that the affirmative can mandate the implementation of their proposal. Remember that all debate resolutions contain the word "should" in them. If the negative were to be able to argue legitimately that the affirmative plan will never be adopted by congress, for instance, the entire debate could revolve around this issue and you would never consider the substance of the issues involved. In fact, the negative could be admitting attitudinal inherency if they argued in this manner. However, in order to preclude this possibility, the affirmative can fiat their proposal into existence. In other words, they only have to argue that the proposal "should" be adopted, not that it "would" be adopted. This is why a negative argument like the one mentioned above is called a "should-would" argument and is not legitimate in academic debate. Let me hasten to add that the affirmative is limited to fiating their program into existence. They cannot fiat solvency. Also, the negative can argue some of the reasoning behind congress' attitude against the affirmative proposal. There may be the source of some good disadvantages here. However, an argument that simply states that congress will not adopt the proposal is overcome by the affirmative fiat power.[2]

Theodore F. Sheckels, Jr. supplies a similar analysis of fiat power without restricting it to any one side when he states:

> The word "should" appears often in policy resolutions. I have not treated it as a key term in need of definition because its definition in debating is fairly standardized. "Should" means "ought to but not necessarily will." This standardized definition implies two important conventions of debate: (1) that the team advocating the resolution does not have to show it will be adopted; (2) that the team advocating the resolution does not have to show that a Constitutional amendment will be passed by Congress and ratified by the requisite number of states if an amendment is necessary for the presented or implied policy to take effect. Both of these conventions are subsumed under the term "fiat power." The team advocating a policy is permitted to command or "fiat" the presented or implied policy into operation, bypassing, as it were, the necessary legislative actions. This convention has long been observed in debating so that attention will be directed toward the merits of the resolution, not the political dimensions any presented or implied policy possesses. Beginning debaters need to know about this convention so that they do not waste time discussing whether Congress will or will not pass a policy.[3]

Fryar and Thomas give a succinct summary of the concept in defining fiat as:

> An assumed power to put a proposal into effect; a legal mandate binding on the parties involved, overriding their personal attitudes. Debaters are allowed to say their proposals are to be implemented "by fiat" for the sake of avoiding quibbles over whether, in the real world, such proposals could be expected to receive approval. Fiat power is limited to matters subject to law; it is not a "magic wand" to avoid substantive argument. For example, an energy bill could be adopted by fiat, but a new oil supply cannot be discovered by fiat.[4]

Debaters must remember that fiat power is not limited to any one side. In the words of an old adage: "What is sauce for the goose is sauce for the gander." Just as the affirmative team can fiat their plan, the negative team can fiat a counterplan. In the words of Sheckels, previously noted, "The team advocating a policy is permitted to command or 'fiat' the presented or implied policy into operation, bypassing, as it were, the necessary legislative actions."[5] The nega-

tive can bypass the necessary legislative actions in their counterplan as can the affirmative in their plan. To argue that the legislative actions would not happen, and therefore that the negative counterplan would not eventuate, clearly lies outside the limits of contest debating.

It is unfortunate when debaters misanalyze the concept of fiat power. However, it is even more unfortunate when debate judges and coaches allow such misanalysis. In the game-like world of competitive tournament debating, fiat power is simply another of the rules of the game. For the game to work, all of the players need to know the rules and to play by them; after all, debate is a game for the benefit of the players.

NOTES

[1]David A. Ling and Robert V. Seltzer, "The Role of Attitudinal Inherency in Contemporary Debate," The Journal of the American Forensic Association VII (Spring, 1971), pp. 278-283. See especially: p. 280.

[2]Gerald H. Sanders, Introduction to Contemporary Academic Debate (Prospect Heights: Waveland Press, 1983), p. 56.

[3]Theodore F. Sheckels, Jr., Debating Applied Rhetorical Theory (New York: Longman, Inc., 1984), p. 14.

[4]Maridell Fryar and David A. Thomas, Basic Debate (Lincolnwood: National Textbook Company, 1983), p. 198.

[5]Sheckels, p. 14.